THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION NO : 18880 of 2005

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Dated:30.08.2005

Between:

Dandu Trinadha Raju, s/o late Sri Venkata Rajam Raju,
r/o 36-92-239, Srinivasa Nagar, Kancharapalem,

Visakhapatnam-8 and others.

..... PETITIONERS

AND

The District Collector, Visakhapatnam-530 002, and others.

.....RESPONDENTS

ORDER:

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The petitioners, who are 23 in number, assail the land acquisition proceedings initiated by the first respondent for a public purpose namely to provide infrastructure development of Gangavaram Port. They assail the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') and the declaration issued under Section 6 of the Act as being illegal and arbitrary. Be it noted that by a notification under Section 4(1) of the Act, dated 10.04.2005, the first respondent also dispensed with the enquiry under Section 5A of the Act in exercise of powers under Sub Section (4) of Section 17 of the Act.

The petitioners purchased house plots admeasuring 267 square yards to 366 square yards (except petitioner No.9, who purchased 672 square yards) in 1986. This land is comprised in Survey No.98/1A of Pedagantyada Village, Visakhapatnam. The total extent of land is Acs.14.20 cents. The land was initially acquired for the Visakhapatnam Steel Plant in 1981. However, the first respondent by proceedings dated 03.12.1985, ordered reconveyance of the land, as the same was not required for Steel Plant. After reconveyance of the land to the original owners, the petitioners purchased the plots in 1986. In 1994, Steel Plant again proposed acquisition of the land in Survey No.98/1A for construction of railway line to Gangavaram Port from the Steel Plant. In the enquiry conducted under Section 5A of the Act, the petitioners raised objections. After considering the objections, the competent authority having regard to the possibility of realigning the railway line

dropped Survey No.98/1A of Pedagantyada from the acquisition proposals. Be that as it is, again the impugned notification and the declaration were issued for Gangavaram Port.

The only ground urged in support of the writ petition is that the enquiry under Section 5A of the Act is dispensed with, in the routine manner and if only when such enquiry is conducted the petitioners would be able to raise their contentions. As an incidental question it is also contended that there is no necessity for invoking the powers under Section 17(4) of the Act as there is no urgency for acquiring the land for Gangavaram Port. Reliance is placed on the decision of the Supreme Court in **Union of India v. Krishan Lal Arneja**.

The learned Assistant Government Pleader for Land Acquisition submits that whether there is urgency for invoking the provisions of Section 17(4) of the Act is not a justiciable issue in all cases, unless *mala fides* are attributed. Secondly, he would submit that the establishment of the Gangavaram Port itself is time bound Project, which requires dispensing with enquiry under Section 5A of the Act in view of the urgency.

There cannot be any dispute that the enquiry contemplated under Section 5A of the Act gives a valuable right to the owners of the land whose lands are proposed for acquisition to raise objections for such acquisition. However, it may not be possible to accept the submission of the landowners in every case that there was no need for acquisition, or the public purpose for which the land is proposed to be acquired is not public purpose at all. The Act is a self-contained code regulating the exercise of power of eminent domain by the State. If State action is intended for public purpose, ordinarily the Court should not interfere in such matters. Establishment of a Port is certainly a public purpose. Ordinarily, such projects are time-bound projects scheduled to be completed within a given period of time to avoid cost escalation due to delayed implementation. In such a case it would not be possible to assume that there is no urgency at all. In **Union of India v. Krishan Lal Arneja** (supra) dealing with the question of urgency, the Supreme Court observed (Para 17 ALD)

> Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor *i.e.,* whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. **Normally urgency to acquire a land for**

> **public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous**. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration.
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> (emphasis supplied)

In view of this above dicta, it is not possible to countenance the submission of the learned counsel that there is no urgency of dispensing with enquiry under Section 5A of the Act.

The writ petition is devoid of merits and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

30.08.2005

vs